IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2445 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAYABEN PRANJIVANDAS POPAT - Appellant(s)
Versus
SURESHCHANDRA CHOGALAL RAO & 2 - Defendant(s)

==========

Appearance :
MR HEMANT S SHAH for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
SERVED BY RPAD - (N) for Defendant(s) : 1 - 2.
MR PV NANAVATI for Defendant(s) : 3,
MR VIBHUTI NANAVATI for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI
Date : 13/02/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

This appeal arises out of a judgment and award dated 24.3.2000 passed by the Motor Accident

Claims Tribunal (Aux.), Surendranagar in MAC Petition No. 928 of 1991.

2. On 21.5.1991 when one Shri Natverlal Popat was travelling in his Maruti car, his car met with an accident. The car dashed against a truck which sped away after causing the accident. Natverlal who himself was driving the Maruti car received fatal injuries. His wife, son and another near relative who were also travelling the same car also received bodily injuries. For the death of Natverlal, his widowed mother, his widow and two sons filed the above mentioned claim petition seeking compensation of Rs.25 lakhs from the driver, owner and insurer of the truck involved in the accident.

3. The Claims Tribunal came to the conclusion that the accident was caused on account of 60% negligence attributable to the driver of the truck and 40% negligence of the Maruti car i.e. the deceased himself.

4. With respect to the quantum of compensation, before the Tribunal it was urged by the claimants that the deceased was an income-tax practitioner and with his experience and qualifications, had the potential of earning income of Rs.2 lakhs per year. The age of the deceased on the date of the accident was 48 years. The Tribunal believed the prospective income of the deceased at Rs.16,000/- per month or Rs.1,92,000/- per year, adopted the multiplier of 12

and adding other conventional amounts, computed the compensation at Rs.15,86,000/-. Since, however, the Tribunal held that the deceased himself was negligent to the extent of 40% in causing the accident, in the ultimate award, the Tribunal reduced the compensation payable to the claimants by 40% of the above sum. Eventually, the Tribunal awarded a sum of Rs.9,39,600/- to the claimants.

It is this award which the claimants have challenged before us in the present appeal seeking enhancement of the compensation.

5. Learned advocate Shri Hemant Shah appearing for the appellants (original claimants) submitted that the Claims Tribunal gravely erred in holding the deceased himself negligent to the extent of 40% in causing the accident. He pointed out that the claimants themselves were examined as eye witnesses before the Claims Tribunal who had stated to the effect that the Maruti car was being driven at a moderate speed and on correct side of the road when the truck came from the opposite direction at a high speed and dashed against the Maruti car. He further pointed out that the driver had not entered into the witness box nor was summoned by the Insurance Company to give his evidence. He, therefore, submitted that in view of this uncontroverted evidence of the claimants, the Tribunal could not have concluded that the driver of the Maruti car was negligent in causing the accident.

6. On the other hand, learned advocate Mr

Vibhuti Nanavati appearing for the Insurance Company – opponent No.3 herein submitted that the conclusion of the Tribunal with respect to the respective negligence of the two drivers calls for no interference. He submitted that in fact it was the driver of the Maruti car who had while attempting to overtake another vehicle travelled on the wrong side and had caused the accident in question. He submitted that even if the Court were to come to the conclusion that the truck driver was solely negligent in causing the accident, eventually the award needs no interference since the computation made by the Tribunal is on the higher side. He submitted that from the income-tax returns of the deceased produced by the claimants before the Claims Tribunal, the Tribunal could not have concluded that the deceased had the potential of earning income of Rs.16,000/- per month.

7. Having heard the learned advocates appearing for the parties, we find that immediately after the accident, the son of the deceased Piyushbhai had lodged a complaint with the police authorities indicating the manner in which the accident had taken place. In the FIR produced at Exh. 34, the complainant had stated that on 21.5.1991 when he alongwith his parents and uncle were travelling in the Maruti car, the same was hit by an incoming truck near Bamanbor. The truck was being driven at an excessive speed and was trying to overtake another vehicle. After causing the accident, the truck had

sped away. Essentially the same version was repeated by the complainant in his deposition before the Claims Tribunal also. In addition thereto, the claimants also examined Bhavnaben, widow of the deceased who was also an eye witness since she herself was travelling in the same car at the time of the accident. She also testified before the Tribunal that the Maruti car was being driven at a moderate speed and on the correct side the road. Additionally, the claimants also examined Shri Mulchandbhai Manilal Kotak, a relative of the deceased who also was a co-passenger in the car. He also narrated the incident in similar manner. Significantly he was occupying the front seat of the car next to the driver. He, therefore, had sufficient opportunity to witness the exact event.

8. As noted earlier, the opponents made no attempt to examine the driver of the truck before the Tribunal to dislodge the evidence led by the claimants. Additionally, the panchnama of the scene of the accident which was produced before the Tribunal at Exh.35 also indicates that the Maruti car was lying on the correct side of the road. Considering all these aspects of the matter, it is difficult to appreciate how the Tribunal without any further discussion concluded that the driver of the Maruti car was negligent to the extent of 40% in causing the accident.

9. Having taken into account the materials on

record, there would be inescapable conclusion that the driver of the truck was solely negligent in causing the accident. In coming to such a conclusion, we have taken into account the oral deposition of the eye witnesses, lack of any evidence on part of the driver of the truck, the contents of the panchnama of the scene of the accident as well as the factor that the the truck after causing the accident sped away from the scene of the accident.

10. In the conclusion, we find that the Tribunal materially erred in holding that the driver of the Maruti car was negligent to the extent of 40% in causing the accident. We hold that the driver of the truck was solely negligent in causing the accident.

11. Coming to the question of quantum of compensation, we find that from the income-tax returns produced by the claimants at Exhs. 48 and 49, in the last financial year the income of the deceased was approximately Rs.1,00,000/-. In that view of the matter, the Tribunal erred in coming to the conclusion that the prospective income of the deceased would be accepted at Rs.16,000/- per month or Rs.1,92,000/- per annum. We find that the said conclusion was on the basis of conjectures not supported by evidence on record.

12. As noted earlier, the documentary evidence on record suggested that the deceased was earning income in the vicinity of approximately Rs.1,00,000/-

per annum shortly before his death. Considering the nature of his qualifications and his standing in the profession, there was possibility of his incoming increasing periodically. For the purpose of uniform prospective income for the rest of his professional career, Rs.1,50,000/- per annum can be safely taken as his income. We find that the claimants before the Tribunal included widowed mother of the deceased, wife of the deceased and two sons who were on the date of accident major. Considering these aspects of the matter, we have no reason to depart from the normal rule of deducting one-third of the income of the deceased for his personal expenses. Thus, the sum of Rs.1,00,000/- shall be available to the family by way of dependency benefits. The Tribunal had adopted the multiplier of 12 for the deceased who was aged 48 years on the date of the accident. We see no reason to change the choice of multiplier. Thus, the family shall receive Rs.12,00,000/- (Rs.1,00,000 x 12) by way of dependency benefits. To this figure, we may add Rs.25,000/- towards loss to the estate and Rs.15,000/- for loss of consortium as well as Rs.5,000/- for funeral charges. In all, the claimants shall receive a sum of Rs.12,45,000/- by way of compensation. Since we have already held that it was the truck driver who was solely negligent in causing the accident, the entire compensation shall be paid to the claimants by the opponents jointly and severally and in particular opponent No.3 – Insurance Company.

13. In the result, the appeal is partially

allowed. The claimants shall receive the additional amount of Rs.3,05,400/- with simple interest at the rate of 9% per annum from the date of the claim petition till realization with proportionate costs. The additional compensation being allowed under this appeal shall be deposited before the Tribunal by 31st March, 2007.

14. Upon deposit of the additional amount, the Tribunal shall invest 80% of the amount in the fixed deposits in any nationalized bank near the residence of the claimants for a period of three years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, with permission to original claimant No.2 – Bhavnaben Natverlal Popat (widow of the deceased) to withdraw interest periodically accruing on the fixed deposits and with a direction to the bank not to permit the accounts to be operated by any power of attorney holder other than a close relative of the claimants. The remaining amount shall be paid over to appellant No.2 (original claimant No.2) – Bhavnaben Natverlal Popat (widow of the deceased) by an account payee cheque after proper verification and after informing her about the amounts being invested/disbursed and the terms and conditions of the investment.

[M.S. SHAH, J.] [AKIL KURESHI, J.]

sundar/-